

APPEAL NO. 170518

FILED APRIL 27, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 1, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the (date of injury), compensable injury does not extend to depression, patellar tendonitis, or a meniscus tear of the left knee; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 15, 2016; (3) the claimant's impairment rating (IR) is one percent; and (4) the claimant had disability from January 16, 2016, through the date of the CCH.

The claimant appealed the hearing officer's determinations of the extent of the compensable injury, MMI, and IR, contending the evidence does not support those determinations. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

The hearing officer's determination that the claimant had disability from January 16, 2016, through the date of the CCH was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), in the form of at least a left knee contusion. The claimant testified that she injured her left knee when she struck it on a metal well.

EXTENT OF INJURY

The hearing officer's determination that the (date of injury), compensable injury does not extend to depression, patellar tendonitis, or a meniscus tear of the left knee is supported by sufficient evidence and is affirmed.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that

the report of the designated doctor has presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides in pertinent part that the assignment of an IR shall be based on the injured worker's condition as of the MMI date considering the medical record and the certifying examination.

The hearing officer determined the claimant reached MMI on January 15, 2016, with a one percent IR as certified by (Dr. B), the designated doctor appointed by the Division.

Dr. B examined the claimant on April 19, 2016. In a Report of Medical Evaluation (DWC-69) dated April 22, 2016, Dr. B certified the claimant reached MMI on January 15, 2016, and, using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides), assigned a one percent IR. Dr. B noted in his attached narrative report that the compensable diagnosis was a left knee contusion. Dr. B also noted that the claimant underwent an arthroscopic synovectomy, chondroplasty of the patellofemoral joint, and left knee partial medial meniscectomy on October 12, 2015. Dr. B further noted that after this surgery the claimant received five out of 12 recommended post-surgical physical therapy visits, and opined that although she did not receive all 12 physical therapy sessions she had reached a point where she "could no longer anticipate making appreciable gains in [her] care." Dr. B noted that the claimant's left knee range of motion measurements resulted in zero percent IR. However, Dr. B assigned the claimant a one percent IR based on Table 64 on page 3/85 of the AMA Guides for the left knee partial meniscectomy.

In evidence are medical records from (Dr. J), a doctor with whom the claimant treated. On September 2, 2015, Dr. J noted that the claimant had previously completed approved physical therapy but her knee pain had worsened. Dr. J noted diagnoses of a left knee meniscus tear and sprain/strain, and recommended orthopedic surgical evaluation because the claimant had failed conservative efforts. As noted above we have affirmed the hearing officer's determination that the (date of injury), compensable injury does not extend to depression, patellar tendonitis, or a meniscus tear of the left knee. The compensable injury in this case, as stipulated by the parties, is a left knee

contusion. The evidence did not establish that the October 12, 2015, left knee surgery was treatment for the claimant's left knee contusion. Dr. B's MMI/IR certification considers treatment for conditions that have been determined not to be part of the compensable injury. Accordingly, we reverse the hearing officer's determinations that the claimant reached MMI on January 15, 2016, and that the claimant's IR is one percent.

There is one other MMI/IR certification in evidence, which is from Dr. J. Dr. J examined the claimant on January 23, 2017, and certified that the claimant reached MMI on that same date with a four percent IR. Dr. J discussed in his narrative report the October 12, 2015, left knee surgery, and opined that the claimant reached MMI as of the final date of physical therapy, which was January 23, 2017. In a medical record dated January 20, 2016, Dr. J noted that the claimant had completed 12 sessions of post-operative therapy and recommended a work-hardening program. As noted above, the evidence did not establish that the October 12, 2015, left knee surgery was treatment for the claimant's left knee contusion. Dr. J based his MMI/IR certification on treatment that was not established to be recommended for the compensable injury. Accordingly, Dr. J's MMI/IR certification cannot be adopted.

As there is no MMI/IR certification in evidence that can be adopted, we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the (date of injury), compensable injury does not extend to depression, patellar tendonitis, or a meniscus tear of the left knee.

We reverse the hearing officer's determination that the claimant reached MMI on January 15, 2016, and we remand the issue of MMI to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant's IR is one percent, and we remand the issue of IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. B is the designated doctor in this case. On remand the hearing officer is to determine whether Dr. B is still qualified and available to be the designated doctor. If Dr. B is no longer qualified or available to serve as the designated doctor, then another

designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury.

The hearing officer is to advise the designated doctor that the compensable injury of (date of injury), extends to a left knee contusion. The hearing officer is also to advise the designated doctor that the (date of injury), compensable injury does not extend to depression, patellar tendonitis, or a meniscus tear of the left knee. The hearing officer is to request the designated doctor to rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination.

The certification of MMI should be the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated considering the physical examination and the claimant's medical records. The assignment of an IR is required to be based on the claimant's condition as of the MMI date considering the medical records and the certifying examination and according to the rating criteria of the AMA Guides and the provisions of Rule 130.1(c)(3).

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on the claimant's MMI and IR for the (date of injury), compensable injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge